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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 363

WILLIAM R. SAMPSELL, RAY C. RESH, EARL ALBERTSON, JUNIOR A. AVERS, WALLACE L. AVERS, M. S. BENNETT, HUBERT BALL, C. F. BISER, GEORGE D. BEAL, THOMAS P. COUNIHAN, J. D. CLARK, MAURICE D. CLEM, LOUIS R. DAVIS JAMES F. DECKER, C. V. DEVELBISS, H. H. GROVES, KENNETH HOSTETLER, ELMER R. HEITT, C. O. KEARCHNER, MAHLAN A. LEATHERMAN, HAROLD C. LEGEER, M. F. MILLER, ROBERT A. PANCAKE, GLENN W. STRICKLER, FRANK L. K. SMITH, FRANK A. TROZZO, E. B. WISEMAN, I. M. WATKINS, C. M. KENNEDY, G. H. R. DAVIS, H. M. SAVILLE, AND G. B. JONES,

Petitioners,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
A BODY CORPORATE
AND
BROTHERHOOD OF RAILROAD TRAINMEN,
AN UNINCORPORATED ASSOCIATION,
AND
GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, AN UNINCORPORATED ASSOCIATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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INDEX

Table of Contents

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Effect of the granting of certiorari in Pennsylvania R. Co. v. Rychlik	3
As to Question 1	4
As to Question 2	4
As to Question 3	5
Statutes Involved	7
Statement of the Case and Reasons for Granting Writ	7
1. Brief Statement of Facts	7
2. Constitution of the System Board	8
3. Petitioners' Transfer from Brotherhood to U.R.O.C.	12
4. Subsequent Denial of Membership in Brotherhood	13
5. Membership in Other National Unions	16
Conclusion	17

Appendices

Appendix A. Statute (Tit. 45, U.S.C., §§152 & 153)	21
Appendix B. Opinion of U. S. Court of Appeals, 4th Circuit	28
(Note: Opinion of the U.S. District Court for District of Md. appears at p. 29 of Appellant's Appendix in the Court of Appeals)	
Appendix C. Judgment of the U.S. Court of Appeals for the 4th Circuit	30

Table of Cases

	PAGE
Alabaugh v. Baltimore & O. R. Co., 125 F. Supp. 401, aff. (4 Circ.) 222 F. 2d 861, cert. den. 350 U.S. 831	6, 18
Atlantic C. L. R. Co. v. Pope, (4 Circ.) 119 F. 2d 39	5, 9
Bohnen v. Baltimore & O. Chic. Term, 125 F. Supp. 463	18
Dwellingham v. Thompson, 91 F. Supp. 787, aff. (8 Circ.) 198 F. 2d 591	5, 9
Edwards v. Capital Airlines, (App. D.C.) 176 F. 2d 55	4
Johns v. Baltimore & O. R. Co., 118 F. Supp. 317, aff. 347 U.S. 964 (mem.)	9
Miller v. Pennsylvania R. Co., (6 Circ.) No. 12,679, cert. pend. No. 331, Oct. Term, 1956	5
Pennsylvania R. Co. v. Rychlik, cert. gr. 351 U.S. 930 to 2d Circ., 229 F. 2d 171	3, 11
Pigott v. Detroit, T. & I. R. Co., (6 Circ.) 221 F. 2d 736	5, 6, 9
Primakow v. Railway Exp. Agency, 56 F. Supp. 413	5, 9
Railway Employees' Dept. v. Hanson, 351 U.S. 225	15, 17
Rychlik v. Pennsylvania R. Co., (2 Circ.) 229 F. 2d 171, cert. gr. 351 U.S. 930	4, 5, 9
Steele v. Louisville & N. R. Co., 323 U.S. 192	11
United R. O. C. v. Northern P. R. Co., 208 F. 2d 135, cert. den. 347 U.S. 929	9
United R. O. C. v. Pennsylvania R. Co., (7 Circ.) 212 F. 2d 938	5, 9
United R. O. C. v. Wyer, 115 F. Supp. 359, aff. (2 Circ.) 205 F. 2d 153, cert. den. 347 U.S. 929	9

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OPINIONS BELOW

The opinion of the United States Court of Appeals is reprinted in Appendix B; it is reported unofficially in 30 Labor Cases, par. 70,122, but has not yet been officially reported. The opinion of the United States District Court for the District of Maryland (reprinted at p. 29 of Appellants' Appendix in the Court of Appeals, copies of which are furnished with this Petition), is unpublished.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit, which is here sought to be reviewed, was dated and entered on July 13, 1956. The jurisdiction of this Court is invoked under U.S. Code, Title 28, Section 1254(1).

QUESTIONS PRESENTED

The case arises under a "union shop agreement" adopted pursuant to the Union Shop Amendment to the Railway Labor Act (U.S. Code, tit. 45, sec. 152, Eleventh). The major issues are:

Question 1. Where a union shop agreement creates a system board of adjustment, consisting of a representative of the union and a representative of the carrier (a third or "neutral" member being appointed only in case of disagreement), as "the sole and exclusive method for determining disputes" under such agreement, does it thereby withdraw jurisdiction from the National Railroad Adjustment Board?

Question 2. Where such system board is specifically granted final and exclusive appellate jurisdiction of disputes between a union and non-member employees, but only on appeal by the union, and such employees have fully exhausted the administrative remedies afforded them under the hearing procedure subordinate to the system board set up in the agreement, are they entitled to judicial review of the administrative decisions rendered against them?

Question 3. Under the provision of the Union Shop Amendment that membership in another union "national in scope" shall prevent discharge of an employee for non-membership in the bargaining union, should the phrase "national in scope" be construed according to the natural meaning of the words or is it intended to have a technical, restricted meaning?

(The case also involves some other issues, to be mentioned subsequently).

EFFECT OF THE GRANTING OF CERTIORARI IN PENNSYLVANIA RAILROAD COMPANY v. RYCHLIK (Certiorari granted May 14, 1956, 351 U.S. 930, No. 821, October Term, 1955).

From the foregoing questions, it will readily be seen that at least two of the issues in the instant case are substantially similar to, if not identical with, those in the pending case of *Pennsylvania Railroad Co. v. Rychlik,*

supra, in which this Court has granted the writ of certiorari to the Court of Appeals for the Second Circuit, presumably because of a conflict in the rules prevailing in two or more circuits. In this case, arising in the Second Circuit, and in a similar case in the Sixth Circuit a system board of adjustment, consisting of a carrier and a union representative, had been created. In each, employees cited for noncompliance with a union shop agreement were ordered discharged after exhausting their administrative remedies through a hearing before the system board. In each, judicial review was sought in a proceeding to enjoin discharge, but with different results.

As to Our Question 1

Both cases agreed that the jurisdiction conferred on the system board was in substitution for the jurisdiction of the National Railroad Adjustment Board. (In the instant case, however, the Court of Appeals for the Fourth Circuit held that the National Adjustment Board had "exclusive jurisdiction", notwithstanding the creation of the system board.)

As to Our Question 2

In *Rychlik v. Pennsylvania R. Co.*, (1956) 229 F. 2d 171, the Court of Appeals for the Second Circuit unanimously reversed a decision denying relief, taking the position that in view of the constitution of the system board, its decision must be reviewable on the merits, in order to preserve the employee's basic right to a decision by a competent and impartial tribunal. The same view was taken by the Court of Appeals for the District of Columbia in *Edwards v. Capital Airlines*, (1949) 176 F. 2d 55, which arose under the identical system board procedure provided for air carriers under Section 184 of Title II of the Railway Labor Act (U.S. Code, tit. 45).

But in *Pigott v. Detroit, T. & I. R. Co.*, (1955) 221 F. 2d 736, the Court of Appeals for the Sixth Circuit took the opposite point of view. That Court held that the administrative decision was final and binding. A vigorous dissent was entered by Judge Allen, based on grounds similar to those stated by Judge Learned Hand in the *Rychlik* case. The Sixth Circuit has recently affirmed the *Pigott* case in *Miller v. Pennsylvania R. Co.* (No. 12,679, June 4, 1956, unreported; cert. pending, No. 331, Oct. Term, 1956).

The Fourth Circuit's decision in the instant case aligns it with the position taken by the Sixth Circuit in the *Pigott* case, although its brief opinion indicates that it regarded the National Railroad Adjustment Board as having jurisdiction notwithstanding the creation of the system board, and it therefore concluded "that administrative remedies had not been exhausted". In taking this novel position it apparently diverges from all other authorities;[1] and its decision actually denies any review to petitioners who have in fact pursued every administrative remedy allowed them under the terms of the agreement setting up the system board procedure.

As to Our Question 3

In *Rychlik v. Pennsylvania R. Co., supra*, the Second Circuit held that the District Court should decide as a

[1] Where a system board has been created, the National Railroad Adjustment Board does not have jurisdiction. *Pigott v. Detroit, T. & I. R. Co., supra*, (6th Circ. 1955) 221 F. 2d at p. 741; *Rychlik v. Pennsylvania R. Co., supra*, (2d Circ. 1956) 229 F. 2d at p. 173 (where the matter is fully discussed); *United Railroad Operating Crafts v. Pennsylvania R. Co.*, (7th Circ., 1954) 212 F. 2d 938. The Court of Appeals for the Fourth Circuit has recognized the same principle. *Atlantic Coast Line R. Co. v. Pope*, (1941) 119 F. 2d 39. To the same effect are *Primakow v. Railway Exp. Agency*, (D. Ct. E.D. Wis. 1943) 56 F. Supp. 413; *Dwellingham v. Thompson*, (D. Ct. E.D. Mo. 1950) 91 F. Supp. 787, affd. (8th Circ. 1952) 198 F. 2d 591.

matter of fact whether UROC, a union to which the employees belonged, was "national in scope", so as to preclude their discharge for non-membership in the Brotherhood.

In *Pigott v. Detroit, T. & I. R. Co., supra,* the Sixth Circuit held that the final determination of this identical question, the status of UROC, was within the exclusive province of the system board and not subject to judicial review. The Court did, however, quote with approval a passage from the opinion of Judge Levin in the District Court, in which he stated that only a union which had qualified for the selection of National Adjustment Board members could be "national in scope", and that the system board had therefore reached the only possible conclusion which it could reach.

In *Alabaugh v. Baltimore & O. R. Co.,* 222 F. 2d 861 (1955), cert. den. 350 U.S. 831, the Fourth Circuit held that the question whether UROC was "national in scope" must be referred to the National Railroad Adjustment Board, notwithstanding the creation of a system board; and it specifically affirmed that ruling in the instant (*Sampsell*) case.

In the light of these three different rules prevailing in three circuits, little order or consistency can be expected in the rulings of the various boards and courts affecting the status and livelihood of the thousands of railroad men who, unhappily, joined UROC believing in good faith that it was national in scope. Their status will remain obscure and confused until this Court has determined the correct rule to be applied throughout the nation.

STATUTES INVOLVED

The Jurisdiction of the District Court

U.S. Code, tit. 28, sec. 1337 provides:

> "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

The Statute Upon Which Petitioners' Rights Are Based

U.S. Code, tit. 45, sec. 152, Eleventh, the so-called "Union Shop Amendment" to the Railway Labor Act, appears in full in Appendix A, *infra*, together with other pertinent parts of secs. 152 and 153 of that Act. Petitioners' rights herein asserted are founded on these portions of the Railway Labor Act.

STATEMENT OF THE CASE AND REASONS FOR GRANTING THE WRIT

1. *Brief Statement of Facts*

Petitioners, railroad trainmen, were cited for "non-compliance" with a union shop agreement. The agreement created a system board of adjustment having "sole and exclusive jurisdiction" of disputes thereunder, with provision for original administrative hearings by the carrier. The Brotherhood might appeal to the system board, but otherwise the decision on the appellate administrative hearing was "final and binding". In such hearings petitioners raised the following defenses:

(a) That they had joined, and were at the time of citation members of, UROC, a newly created labor union, covering the railroad industry and nation-wide in its existence and operations;

(b) That, subsequent to their citation and before the order of discharge, they joined other unions admittedly "national in scope";

(c) That, subsequent to their citation and before the order of discharge, they requested the Brotherhood to reinstate them in membership;

(d) That membership in the Brotherhood was then denied them because of their union activity in UROC, the rival organization.

These defenses and others were ruled insufficient and they were ordered discharged. They then sought injunctive relief in the district court, alleging that their rights under the Railway Labor Act were infringed by their discharge.

2. *Constitution of the System Board*

The complaint (Applts. App. 12) alleges that "the union shop agreement provides for a local system board of adjustment whose jurisdiction is sole, final and exclusive and it denies to the plaintiffs any remedy to any other tribunal" (Par. 22). The fact of creation of a system board by the agreement is therefore admitted for purposes of the motion to dismiss upon which this case arises. The agreement itself is in the record (Applts. App. 17-22).

Sec. 153, *Second*, of the Railway Labor Act specifically authorizes such a "system board" to be established by agreement "for the purpose of adjusting and deciding disputes of the character specified in this section"; and by Sec. 153, *First*, the disputes over which it has jurisdiction are defined (in prescribing the jurisdiction of the National Railroad Adjustment Board) as including "the disputes between an employee or group of employees and a carrier

or carriers growing out of grievances or out of the interpretation or application of agreements concerning . . . working conditions".

These provisions of sec. 153 have been consistently interpreted by the courts (1) as generally granting primary jurisdiction to the National Adjustment Board of cases involving the discharge of employees for alleged violation of union shop agreements,[2] and (2) as depriving the National Adjustment Board of its jurisdiction in any labor dispute when a "system board" procedure for such disputes is set up pursuant to sec. 153, *Second*.[3]

The character of the "system board" procedure set up by the agreement in the present case is readily ascertained from an examination of Sections 5 and 8 of the agreement (Applts. App., 19-22). Under Section 5(b) and (c) the Brotherhood institutes a proceeding by advising the carrier "of any employee who by reason of failure to comply with the terms of this agreement is not entitled to continue in employment", and the carrier automatically discharges the employee unless, after notice, he requests a hearing. The carrier holds a hearing, if requested, and renders a decision. Either the employee or the Brotherhood may appeal from the decision to "the highest officer of the carrier designated to handle such appeals". It is further provided that the "decision on appeal shall be *final and binding* unless proceedings are instituted *by the Brotherhood*" (italics ours) "for further handling of the case under Section 8 of this agreement".

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[2] *Johns v. Baltimore & O. R. Co.*, 118 F. Supp. 317, aff. 347 U.S. 964 (mem.), 74 S. Ct. 776; *United R.O.C. v. Wyer*, 115 F. Supp. 359, aff. 205 F. 2d 153, cert. den. 347 U.S. 929; *United R.O.C. v. Northern Pac. R. Co.*, 208 F. 2d 135, cert. den. 347 U.S. 929.

[3] See cases cited *supra*, note 1 i.e., *Pigott v. Detroit T. & I. Co.; Rychlik v. Pennsylvania R. Co.; United Railroad Operating Crafts v. Pennsylvania R. Co.; Atlantic Coast Line R. Co. v. Pope; Primakow v. Railway Exp. Agency; Dwellingham v. Thompson.*

Section 8 sets up the system board of adjustment and directs that "the procedure provided for in this Section 8 shall be the sole and exclusive method for determining disputes under this agreement" (Applts. App. 22). This language is patently intended to substitute the jurisdiction of the system board for that of the National Adjustment Board pursuant to the statutory authority.

The system board consists of "one representative of the carrier involved and one representative of the Brotherhood". If the committee of two cannot reach a decision, "a neutral referee is to be selected by them; and if they are unable to agree on the third member, "either member of the committee may request the National Mediation Board to appoint such neutral referee". The decision of a majority shall be final and binding upon all parties. It may be commented that these clauses are fairly typical of the system boards which have been created pursuant to the Union Shop Amendment.

To summarize, Section 8, taken in conjunction with Section 5, gives the system board sole and exclusive jurisdiction, which, under the statute as uniformly interpreted, prevents any jurisdiction from attaching to the National Adjustment Board. Yet, as is clear from Section 5, access to this final system board may be had only at the will of the Brotherhood. Otherwise, declares the agreement, the decision of the carrier's "highest officer" is "final and binding".

Taking the agreement at its face value, petitioners did in fact exhaust their administrative remedies under this system board procedure when they completed the second round of appeal hearings before the "highest officer" (Complaint, Pars. 9-15, Applts. App. 8-9). Aside from the fact that this one-sided procedure of appeal is abhorrent to the

sense of justice and fair play, the agreement does clearly limit the administrative remedies of the petitioners to those which they have already pursued without result.[4] Petitioners have, accordingly, exhausted their administrative remedies by the precise terms of the system board procedure set up under the agreement.

The system board itself, having the ultimate right of decision if the employee had prevailed before the carrier, since the Brotherhood could then appeal to the board, is constituted in a manner similar to that in *Pennsylvania R. Co. v. Rychlik, supra*, No. 891, now pending in this Court on certiorari to the Court of Appeals of the Second Circuit (229 F. 2d 171).* To repeat, the board consists of "one representative of the carrier involved and one representative of the Brotherhood". If the committee of two cannot reach a decision, "a neutral referee shall be selected" by them; and if they are unable to agree on the third member, "either member of the committee may request the National Mediation Board to appoint such neutral referee". The decision of a majority shall be final and binding upon all parties.

Thus, this case is similar to the *Rychlik* case in that (1) the highest administrative body to which the petitioners' case could be appealed is a system board on which the Brotherhood controls one of two, or one of three members,

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[4] Respondents could not contend otherwise except by asserting that the agreement itself is illegal in providing that the carrier's decision on appeal shall be "final and binding" on the employee, though not on the Brotherhood, and in attempting thus to foreclose application by the employee to either the National Railroad Adjustment Board or system board. Respondents, who assert the agreement as the basis for discharge of petitioners, can scarcely be heard to complain of its illegality; and should they successfully do so, petitioners would have an incontestable basis for equitable relief against oppression under such an admittedly illegal agreement. *Steele v. Louisville & N. R. Co.*, (1944) 323 U.S. 192.

* Certiorari granted May 16, 1956, 351 U.S. 930.

so that pursuant to the views of the Court of Appeals of the Second Circuit, such board's decision would be fully reviewable by the courts; and (2) petitioners have gone as far toward reaching the system board as they are permitted to go by the terms of the agreement.

Concededly, there has been no actual hearing by the system board; but that is only because the agreement, while permitting the Brotherhood to appeal an adverse decision to the board, denies petitioners' right to do so. Indeed, this absence of mutuality and fairness, this clear evidence of an effort to curtail rights of the individual or the minority, in itself makes a strong appeal for intervention by a court of equity.

Expressed succinctly, the final administrative decision rendered against petitioners was rendered by a hearing officer, appointed by the carrier, who sat under a "sword of Damocles" held over him by the system board, so that, had he rendered a decision adverse to the Brotherhood, it would immediately have been reviewed by the system board on request of the Brotherhood; the system board itself being, under the decision in the *Rychlik* case, a fundamentally biased and partial tribunal, privately constituted, whose decision would be reviewable on the merits by the courts.

Thus, petitioners are in a worse plight under the union shop agreement in this case than was *Rychlik*, since they could not even carry their cause to the biased system board, although the Brotherhood would be permitted to do so.

3. *Petitioners' Transfer from Brotherhood to U.R.O.C.*

The Petitioners were members of the Brotherhood in good standing at the time of adoption of the Union Shop Agreement by the carrier and the Brotherhood on October 1, 1951, and for sixty days thereafter. Subsequently, in the

latter part of 1952 and the early part of 1953, they severally joined the United Railroad Operating Crafts, "a newly created labor union, covering the railroad industry and nation-wide in its existence and operations" (Complaint, Par. 16, Applts. App. 9). Nothing in the testimony affected or detracted from these allegations.

Petitioners thereafter permitted their membership in the Brotherhood to lapse for non-payment of dues, believing in good faith that "UROC" was "a labor union, national in scope, which would qualify under the said union shop provision of the Railway Labor Act (Sec. 152, Eleventh)". The Brotherhood, however, refused to recognize UROC as a union qualified under the Railway Labor Act on the basis mainly that it was not "national in scope". If it was found to be "national in scope", petitioners' membership therein would prevent their discharge for violation of the union shop agreement. The statute also permits free transfer, without penalty, from one "national in scope" union to another. It has never been determined in any judicial proceeding that UROC is not "national in scope"; and in every administrative body which has so held, the Brotherhoods have appointed and controlled one-half of the members.

4. *Subsequent Denial of Membership in Brotherhood*

Later, after much indecisive litigation involving the status of UROC, petitioners sought reinstatement in the Brotherhood.[5] There was a conflict in the testimony[6] as to

[5] Complaint, Pars. 16, 17, 19, Applts. App. 9-10.

[6] Testimony was taken, as the case was heard not only on the motion to dismiss but also on the plaintiffs' application for a preliminary injunction. The testimony dealt mainly with the question of alleged improprieties in the administrative hearings, with the plaintiffs' claim of de facto reinstatement and with special points applicable to particular plaintiffs. No testimony questioned the basic allegations of the complaint relied on in this petition, which were accordingly admitted for purposes of the motion to dismiss.

whether they achieved a de facto reinstatement, many o them having favorable petitions signed by a majority o members of their former local lodges. However, the Dis trict Court found as a matter of fact that they were not re instated. Thus, membership was denied them, and it i clear that membership was not available to them at th time when they requested reinstatement, being threatene with discharge for alleged violation of the union shop agree ment. In most cases, this was subsequent to the origina citation but in all cases it was prior to the final adminis trative decision.

The statute provides that a union shop agreement ma not require membership in the union negotiating such a agreement "with respect to employees to whom member ship is not available upon the same terms and condition as are generally applicable to any other member or wit respect to whom membership was denied or terminate for any reason other than the failure of the employee t tender the periodic dues, initiation fees and assessment . . . uniformly required as a condition of acquiring or re taining membership" (Sec. 152, *Eleventh*).

The complaint in this case, further, specifically alleges that membership in the union was denied petitioners be cause of their activities in the rival union, UROC, and not because of their failure to tender dues, initiation fees and assessments. In fact, their requests for reinstatement neces sarily comprised offers by each petitioner to meet what ever financial obligations were attached to membership. These offers were rejected.

The pertinent allegation of the complaint, not denied in the testimony, is as follows:

> "The plaintiffs' request for admission to and rein statement in the Brotherhood was ignored by the said

defendant Brotherhood because the plaintiffs had previously joined the United Railroad Operating Crafts, a competing railway labor organization and were active therein" (Applts. App. p. 10).

Thus, it is uncontested that the petitioners' request to be reinstated after citation was denied for a reason other than non-payment of dues, and that membership was not then available to them. Does this, under the statute, protect them against discharge?

This Court has recently sustained the constitutionality of the statute by construing it narrowly as (1) imposing only the obligation of financial support of the work of collective bargaining, apart from full membership and apart from support of other activities of the union, and (2) requiring that the unions asserting rights under the Union Shop Amendment must be "open unions".[7] A logical corollary of this construction is that the union must make membership available to, or at least express its willingness to accept dues for the support of collective bargaining from, those employees of whom it complains, whether before or after their citation for non-compliance with a union shop agreement.

The latest statement of this Court's views is found in *Railway Employees' Department v. Hanson,* (May 21, 1956) 351 U.S. 225, 75 S. Ct. 714, where the majority opinion of Mr. Justice Douglas construes the statute as permitting only a requirement of "financial support" limited to "the work of the union in the realm of collective bargaining" (at p. 235) and concludes:

> "We pass narrowly on Sec. 2, Eleventh of the Railway Labor Act. We only hold that the requirement of

[7] *Railway Employees' Department v. Hanson,* (1956) 351 U.S. 225, 75 S. Ct. 714, discussed *infra.*

> financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause".

And Mr. Justice Frankfurter, in his concurring opinion, accepts the validity of the Union Shop Amendment and agreements based thereon subject to this condition:

> ". . . provided, of course, that the unions be open unions, i.e., that membership in the unions be available on ordinary, appropriate terms".

The language of these opinions suggests that the great power conferred on the Brotherhoods by the Union Shop Amendment is a power conferred in trust, and that they must accordingly keep the door of membership open at all times to those whom they would coerce; that the union is permitted to require no more than that the defaulting or recalcitrant member shall either agree to support the union or be discharged, and that this election should continue as long as he continues to be an employee.

5. *Membership in Other National Unions*

In the case of all, or practically all, of the petitioners it is alleged and conceded that they had become members of other unions recognized as "national in scope" prior to the issuance of the final orders dismissing them.[8] This

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[8] Complaint, Par. 8 (Applts. App. 7-8) alleges that "each of the plaintiffs in the class joined at least one other labor union which was national in scope and which was organized in accordance with the Railway Labor Act and which qualified as a union to which each of the said plaintiffs could properly change his membership under the said union shop provision of the Railway Labor Act and still retain his job together with seniority and other privileges. The date of such affiliation varied with each of the said plaintiffs, the said dates ranging from about September, 1951, through 1954. Some examples of the aforementioned labor unions which the said plaintiffs joined are Switchmen's Union of North America and Order of Railway Conductors".

raises the further question, never before submitted to this Court, whether a default under a union shop agreement, dependent for its validity on the Union Shop Amendment, may be cured by acquiring membership in another approved union pending the hearing of complaints on such default; that is to say, does the statute protect the employee against discharge if he is a member of another union "national in scope" prior to and at the time of issuance of the carrier's order discharging him?

If, as indicated by *Railway Employees' Department v. Hanson, supra*, the statute should be narrowly construed for the protection of the individual's "job rights" against forfeiture, that is, his guaranteed seniority virtually assuring lifetime employment, and his intangible right to work and right of free association, then a prior default, especially if incurred inadvertently and in good faith, should be cured by any subsequent compliance with the statutory conditions down to the time when the forfeiture is suffered. The non-unionist should be welcomed at any time into the fold of orthodox unionism rather than forever excluded.

CONCLUSION

From the foregoing statement the issues in this case emerge as significant for the interpretation and administration of the Railway Labor Act and as issues upon which the existing law is in a state of confusion:

(1) Where a union shop agreement creates a system board of adjustment, consisting of a representative of the union and a representative of the carrier (a third or "neutral" member being appointed only in case of disagreement), as "the sole and exclusive method for determining disputes" under such agreement, does it thereby withdraw jurisdiction from the National Railroad Adjustment Board?

(2) Where such system board is specifically granted final and exclusive appellate jurisdiction of disputes between a union and non-member employees, but only on appeal by the union, and such employees have fully exhausted the administrative remedies afforded them under the hearing procedure subordinate to the system board set up in the agreement, are they entitled to judicial review of the administrative decisions rendered against them?

(3) May the individual employee establish, in such judicial proceeding, that another union to which he belongs is in fact "national in scope", in order to defeat his discharge?

(4) May the individual defeat his discharge by

(a) Offering to rejoin the bargaining union and pay his dues prior to such discharge?

(b) Showing that he became a member of another union concededly "national in scope" prior to his discharge?

As to questions (2) and (3), decisions of the highest courts of two circuits are in direct and admitted conflict, and the decision of the Fourth Circuit Court of Appeals in the instant case in principle aligns it with one of them, although it finds jurisdiction to be in a different board.

As to question (4), opinion has been expressed by two district courts that a default once incurred is not curable by subsequent action.[9] We submit that such a conclusion is in conflict with the basic trend in interpretation of the Railway Labor Act by this Court.

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[9] *Alabaugh v. Baltimore & O. R. Co.*, (D. Ct. Md. 1954) 125 F. Supp. 401; *Bohnen v. Baltimore & Ohio Chicago Term.*, (D. Ct. Ind. 1954) 125 F. Supp. 463. The same point was implicitly decided in the instant case both by the District Court and by the Court of Appeals.

For the foregoing reasons, issuance of the writ of certiorari to the Court of Appeals for the Fourth Circuit is believed to be essential to the orderly administration of the Railway Labor Act and the correct disposition of numerous cases arising thereunder.

Respectfully submitted,

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Attorney for Petitioners.

APPENDIX A

TITLE 45, U. S. C., SECTIONS 152 AND 153 (THE RAILWAY LABOR ACT, SECTIONS 2 AND 3):

The Union Shop Amendment to the Railway Labor Act, Public Law 914, 81st Congress, appears as Section 152 Eleventh of the Act.

[The more significant portions of these sections appear in bold-face type]

§152.

GENERAL DUTIES.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. **No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions * * *.**

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract

has been discarded and is no longer binding on them in any way.

* * * * * *

Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, which ever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided*, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further*, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

§153. NATIONAL BOARD OF ADJUSTMENT — GRIEVANCES — INTERPRETATION OF AGREEMENTS.

Sec. 3. First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board," the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

* * * * * *

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, to-

gether with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such board of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involv-train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

* * * * * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up

to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

* * * * * *

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which

is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such a suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

* * * * * *

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or cla ses of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7222

William R. Sampsell, et al.,
Appellants,

versus

The Baltimore and Ohio Railroad Company, a body corporate, Brotherhood of Railroad Trainmen, an unincorporated association, General Grievance Committee, Brotherhood of Railroad Trainmen, Baltimore and Ohio Railroad System, an unincorporated association,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE
(R. Dorsey Watkins, District Judge)

(Argued June 22, 1956. Decided July 13, 1956.)

Before PARKER, Chief Judge, SOPER, Circuit Judge, and TIMMERMAN, District Judge.

PER CURIAM:

This is an appeal from an order denying an injunction and dismissing for lack of jurisdiction an action brought by

railroad employees against the Baltimore & Ohio Railroad Company and a railroad brotherhood with which it had entered into a union shop agreement pursuant to the 1951 amendment to the Railway Labor Act. 45 USCA 152 Eleventh. Appellants had joined the United Railroad Operating Crafts (UROC), a rival union, and had been dropped from membership in the brotherhood for nonpayment of dues, and the brotherhood had demanded their discharge by the railroad. Appeal to railroad officials, pursuant to the collective bargaining agreement, had not resulted in a ruling which would prevent this; and, without appealing to the National Railroad Adjustment Board, they brought this action in the court below to enjoin such action. The trial judge, while expressing an opinion adverse to appellants on the merits, dismissed the case for lack of jurisdiction on the ground that administrative remedies had not been exhausted. We think that this was unquestionably correct. The case cannot be distinguished from *Alabaugh* v. *Baltimore & Ohio Railroad Co.*, 4 Cir. 222 F. 2d 861, where we fully discussed the controlling principles and authorities, and nothing need be added to what was there said. The distinctions which appellants seek to draw are without substance and were sufficiently answered by what was said by the trial judge in his memorandum opinion.

Affirmed.

APPENDIX C

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7222

William R. Sampsell, Ray C. Resh, Milton R. Cochran, Daniel R. Noble, John W. Raupach, Earl Albertson, Junior A. Avers, Wallace L. Avers, M. S. Bennett, Hubert Ball, Charles R. Bergner, C. F. Biser, Gerald Barb, George D. Beal, Thomas P. Counihan, J. D. Clark, Maurice D. Clem, Louis R. Davis, James F. Decker, C. V. DeVelbiss, G. Friend, Michael D. Gleason, H. H. Groves, et al.,

Appellants,

vs.

The Baltimore and Ohio Railroad Company, a body corporate, Brotherhood of Railroad Trainmen, an unincorporated association, General Grievance Committee, Brotherhood of Railroad Trainmen, Baltimore and Ohio Railroad System, an unincorporated association,

Appellees.

Appeal from the United States District Court for the District of Maryland.

This cause came on to be heard on the record from the United States District Court for the District of Maryland, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District

Court appealed from, in this cause be, and the same is hereby, affirmed with costs.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.

MORRIS A. SOPER,
United States Circuit Judge.

GEORGE BELL TIMMERMAN,
United States District Judge.

Filed July 13, 1956

R. M. F. WILLIAMS, JR.,
Clerk.

(Seal)

Office - Supreme Court, U.S.
FILED
OCT 8 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 363

WILLIAM R. SAMPSELL, ET AL.,
Petitioners,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
A BODY CORPORATE
AND
BROTHERHOOD OF RAILROAD TRAINMEN,
AN UNINCORPORATED ASSOCIATION,
AND
GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, AN UNINCORPORATED ASSOCIATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF THE BROTHERHOOD OF RAILROAD TRAINMEN AND GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, IN OPPOSITION

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Baltimore and Ohio Railroad System.

The Daily Record Co., Baltimore 3, Md.

INDEX

Table of Contents

	PAGE
Opinions Below	2
Jurisdiction	2
Statute Involved	2
Question Presented	2-3
Statement of the Case:	
Nature of the Action	3
Statement of Facts	4-10
Argument:	
Reasons for Denial of Writ:	
I. There is no conflict in the decisions of the Circuit Courts of Appeal that exclusive primary jurisdiction of disputes involving the interpretation of union shop agreements, is within the administrative tribunals created by the Railway Labor Act	10-14
II. No important Federal question, requiring settlement by this Court, is presented	14
III. The legal aspects of Rychlik v. Pennsylvania R.R. Co. are entirely distinct from those of this case	14-15
Conclusion	16

Table of Citations

Cases

	PAGE
Alabaugh v. Baltimore & O. R.R. Co., C.C.A. 4, 222 F. 2d 861 (1955), cert. denied 350 U. S. 839, 76 S. Ct. 77 (1955)	11, 12, 13, 15
Atlantic Coast Line R. Co. v. Pope, C.C.A. 4, 119 F. 2d 39 (1941)	13
Bohnen v. Baltimore & Ohio R.R. Co., D.C., N.D. Ind., 125 F. Supp. 463 (1954)	7, 10
Edwards v. Capital Airlines, C.A., D.C., 176 F. 2d 755 (1949)	15
Johns v. Baltimore & O. R.R. Co., D.C., N.D. Ill., E.D., 118 F. Supp. 317 (1954), aff. 347 U. S. 964, 74 S. Ct. 776 (1954)	7
Order of Railway Conductors v. Pitney, 326 U. S. 561, 66 S. Ct. 322 (1946)	11-12
Pigott v. Detroit, T. & I. R. Co., C.C.A. 6, 221 F. 2d 736 (1955), cert. denied 350 U. S. 833, 76 S. Ct. 68 (1955)	11
Rychlik v. Pennsylvania R.R. Co., D.C., W.D., N.Y., 128 F. Supp. 449 (1955), rev. C.C.A. 2, 229 F. 2d 171 (1956), cert. granted 351 U. S. 930, 76 S. Ct. 789 (1956)	14, 15
Sampsell v. Baltimore & Ohio R. Co., D.C., Md., unreported (1956), aff. C.C.A. 4, unreported (1956)	1-2, 4, 6, 8, 10, 11, 14
Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 70 S. Ct. 577 (1954)	12
U.R.O.C. v. Northern Pac. R. Co., C.C.A. 9, 208 F. 2d 135 (1954), cert. denied 347 U. S. 929, 74 S. Ct. 529 (1954)	11
U.R.O.C. v. Pennsylvania R.R. Co., C.C.A. 7, 212 F. 2d 938 (1954), cert. denied 347 U. S. 929, 74 S. Ct. 531 (1954)	11
U.R.O.C. v. Wyer, C.C.A. 2, 205 F. 2d 153 (1953), cert. denied 347 U. S. 929, 74 S. Ct. 529 (1954)	11

Statutes

	PAGE
Judiciary and Judicial Procedure, Title 28, U.S.C.A.:	
Sec. 1254(1)	2
Railway Labor Act, Title 45, U.S.C.A.	5, 11, 12
Sec. 152 Fourth	2
Sec. 152 Fifth	2
Sec. 152 Eleventh	2, 4
Sec. 152 Eleventh (c)	4
Sec. 153 First	2, 13
Sec. 153 First (a)	13
Sec. 153 First (f)	13, 14
Sec. 153 Second	2, 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 363

WILLIAM R. SAMPSELL, RAY C. RESH, EARL ALBERTSON, JUNIOR A. AVERS, WALLACE L. AVERS, M. S. BENNETT, HUBERT BALL, C. F. BISER, GEORGE D. BEAL, THOMAS P. COUNIHAN, J. D. CLARK, MAURICE D. CLEM, LOUIS R. DAVIS, JAMES F. DECKER, C. V. DEVELBISS, H. H. GROVES, KENNETH HOSTETLER, ELMER R. HEITT, C. O. KEARCHNER, MAHLAN A. LEATHERMAN, HAROLD C. LEGEER, M. F. MILLER, ROBERT A. PANCAKE, GLENN W. STRICKLER, FRANK L. K. SMITH, FRANK A. TROZZO, E. B. WISEMAN, I. M. WATKINS, C. M. KENNEDY, G. H. R. DAVIS, H. M. SAVILLE, AND G. B. JONES,

Petitioners,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY, A BODY CORPORATE

AND

BROTHERHOOD OF RAILROAD TRAINMEN, AN UNINCORPORATED ASSOCIATION,

AND

GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, AN UNINCORPORATED ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF THE BROTHERHOOD OF RAILROAD TRAINMEN AND GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, IN OPPOSITION

The Petitioners seek the issuance of a Writ of Certiorari to review the Judgment of the United States Court of Ap-

peals for the Fourth Circuit, entered on July 13, 1956 (Petition 30, 31[1], Record 10, 11[2]), which affirmed the Order of the United States District Court for the District of Maryland entered on April 23, 1956 (Appellants' Appendix in the Court of Appeals 43, 44, R.1. 43, 44[3]), denying the application for a temporary restraining Order and for a preliminary injunction, and dismissing for want of jurisdiction.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit has not yet been officially reported, but is reprinted as Petitioners' Appendix B. 28, 29[4] (R. 6-8). The opinion of the United States District Court has not been officially reported, but is reprinted at A.A. 29-43 (R.1. 29-43).

JURISDICTION

The Petitioners seek to invoke the jurisdiction of this Court under Title 28, U.S.C.A., Sec. 1254(1).

STATUTE INVOLVED

The pertinent provisions of the Railway Labor Act, 45 U.S.C.A., Sec. 152, Fourth, Fifth, Eleventh, and, Sec. 153 First, Second, are reprinted as Petitioners' Appendix A. 21-27 (P. 21-27).

QUESTION PRESENTED

Do the Courts have jurisdiction to adjudicate the claimed right of continued employment asserted by railroad employees whom the railroad has ordered dismissed for non-

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[1] Petition hereinafter designated as P.
[2] Record hereinafter designated as R.
[3] Appellants' Appendix in the Court of Appeals hereinafter designated as A.A.
[4] Petitioners' Appendix hereinafter designated as P.A.

compliance with a valid union shop agreement, when available administrative remedies have not been utilized?

STATEMENT OF THE CASE

Nature of the Action

On March 29, 1956, a Complaint was filed in the United States District Court for the District of Maryland by some of the named Petitioners individually and on behalf of all other employees of The Baltimore and Ohio Railroad Company as a class who are similarly situated, against the Respondents, in which they prayed for a permanent injunction, a temporary injunction, and/or restraining order to prevent their discharge for non-compliance with a union shop agreement between The Baltimore and Ohio Railroad Company[5] and the employees represented by the Brotherhood of Railroad Trainmen.[6] During the course of the hearing in the District Court, the Complaint was amended whereby forty more named Petitioners were added (twelve having since been dropped), and the Petitioners' class limited to the Cumberland Division of the Company (A.A. 2, R.1. 2). The District Court assumed that the Complaint intended to pray for a temporary restraining Order or for a preliminary injunction and so regarded the proceeding (A.A. 33, R.1. 33). The Court, on its own motion, raised the question of jurisdiction (A.A. 33, 44, R.1. 33, 44) and oral motions to dismiss for want of jurisdiction were made on behalf of all Respondents (A.A 33, 44, R.1. 33, 44). By agreement of the parties, the case was heard on the combined motions (A.A. 34, R.1. 34).

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[5] The Baltimore and Ohio Railroad Company hereinafter designated as Company.

[6] Brotherhood of Railroad Trainmen hereinafter designated as Brotherhood.

After five days of hearings (A.A. 34, R.1. 34), The District Court of Maryland (Watkins, J.) rendered an oral opinion (April 11, 1956, A.A. 29-43, R.1. 29-43), setting forth its findings of fact and conclusions of law, and on April 23, 1956, entered an Order denying the application for a temporary restraining Order and for a preliminary injunction and dismissing for want of jurisdiction (A.A. 43-44, R.1. 43-44). The United States Court of Appeals for the Fourth Circuit, in a per curiam opinion (P. 28-29, R. 6-7) affirmed the Order of the District Court and entered Judgment thereon on July 13, 1956 (P. 30-31, R. 10-11).

STATEMENT OF FACTS[7]

The Brotherhood, representing the employees on the Company's system, entered into a union shop agreement with the Company on September 20, 1951, pursuant to the Union Shop Amendment to the Railway Labor Act[8], 45 U.S.C.A., Sec. 152, Eleventh.[9] The agreement became effective on October 1, 1951.

Sec. 1 of the agreement requires all employees subject to the agreements between the Brotherhood and the Company, to become members of the Brotherhood within sixty days of the date they first perform compensated service, after the effective date of the agreement, and provided further, that they thereafter shall maintain membership in the Brotherhood (A.A. 17, R.1. 17). Notwithstanding this latter requirement, they are given the right by the Act, Sec. 152, Eleventh (c) to change from one union to another, provided the latter represent their craft and be "national in scope."

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[7] Deemed advisable because Petitioners' Brief frequently refers to alleged factual matters not contained in Petitioners' "Brief Statement of Facts" (P. 7-8).

[8] Railway Labor Act hereinafter designated as Act.

[9] Approved January 10, 1951, Public Law 914, 81st Congress, 64 Stat. 1238.

Sec. 5(c) of the agreement provides that, after a request has been received by a cited employee, pursuant to Sec. 5(b), the Company shall determine on the basis of the evidence produced at the hearing whether or not the employee has complied with the terms of the agreement and shall render a decision accordingly. It provides, further, that if the decision of the Company is not satisfactory to the employee or to the Brotherhood, it may be appealed directly to the highest officer of the Company designated to handle such appeals, and, that decision is final and binding (A.A. 20, R.1. 20), unless the Brotherhood has the matter referred to a committee for decision, in accordance with the provisions of Sec. 8 (A.A. 20-21, R.1. 20-21).

The Petitioners are employed mainly in the capacity of brakemen, or yard-helpers, or conductors, or switch-tenders, on the Company's lines in and about the Cumberland, Maryland, area (Complaint, A.A. 5, R.1. 5). Their employment rights are governed in general by a collective agreement, as amended by the union shop agreement (A.A. 17-22, R.1. 17-22). Late in 1952 and early in 1953, they ceased paying dues to the Brotherhood and became members of the United Railroad Operating Crafts,[10] another union (not proved to be "national in scope" within the meaning of the Railway Labor Act). They thereby became subject to expulsion from the Brotherhood for non payment of dues in accordance with the Constitution of the Brotherhood (Appellees' Joint Appendix in the Court of Appeals 68. R.2. 68).[11] At various times thereafter,[12] the Petitioners

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[10] United Railroad Operating Crafts hereinafter designated as U.R.O.C.

[11] Appellees' Joint Appendix in the Court of Appeals hereinafter designated as J.A.

[12] Petitioner Counihan on October 16, 1952 (A.A. 69, R.1. 69); Davis, on April 20, 1953 (A.A. 74, R.1. 74); Groves, on April 20, 1953 (A.A. 115, R.1. 115); Wiseman on July 23, 1953 (A.A. 48, R.1. 48).

were cited by the General Grievance Committee, Brotherhood of Railroad Trainmen[13, 14] for non-compliance with the union shop agreement, in failing to pay dues. Several of the Petitioners claimed that they were members of an organization national in scope, other than the Brotherhood.[15] One of the Petitioners claimed that his job was not covered by the union contract.[16] Several claimed that they had applied for reinstatement to the Brotherhood prior to the date of their citation.[17]

Pursuant to Sec. 5(b) of the agreement (A.A. 19, R.1. 19), the Petitioners requested hearings — most of which were held before the terminal trainmaster on August 11, 1953 (A.A. 45, R.1. 45, J.A. 6, R.2. 6) and were stenographically reported (J.A. 6, R.2. 6). The Petitioners were represented by counsel and also by the Local Representative of U.R.O.C. (J.A. 6, 10, R.2. 6, 10).

The agreement provided for a decision to be rendered on the hearing within ten calendar days of the hearing date (A.A. 20, R.1. 20). However, an oral understanding was had between the General Chairman of the Committee and the Company, whereby it was agreed that the decision on the

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[13] General Grievance Committee, Brotherhood of Railroad Trainmen, Baltimore and Ohio Railroad System hereinafter designated as Committee.

[14] The Committee is responsible for enforcing the provisions of the union shop agreement and handling of all grievances pertaining to the agreement after they have been referred to the Committee by the Local Lodges (A.A. 132, 133, R.1. 132, 133).

[15] The District Court found that Petitioner Wiseman had not proved his claim by a preponderance of the evidence (A.A. 41, R.1. 41).

[16] The District Court found that Petitioner Kearchner had failed to establish his claim by a preponderance of the evidence (A.A. 41, R.1. 41).

[17] The District Court found that Petitioners Groves, Davis and Clem did not prove by a fair preponderance of the evidence that at the time of their respective citations, they had applied in the manner required for reinstatement in their local lodges (A.A. 41, R.1. 41).

U.R.O.C. cases would be held in abeyance until such time as certain pending Court cases[18] were cleared up (A.A. 86, R.1. 86). On December 8, 1954, the General Chairman of the Committee wrote the Company to the effect that inasmuch as the pending court cases had been settled, he desired action taken with respect to all those U.R.O.C. cases that had been held in abeyance (A.A. 86, R.1. 86). During this entire time, the Petitioners retained their regular jobs and received their regular pay.

Decisions adverse to the Petitioners were rendered by the hearing officer, and, after notification by the Company that they would be discharged, all of the Petitioners requested appeal hearings in accordance with the terms of Sec. 5(c) of the agreement (A.A. 20, R.1. 20). The appeal hearings were held from January through March of 1955[19] before the hearing officer, an attorney in the employ of the Company and designated by the Vice-President of the Company, and were stenographically reported (J.A. 3, R.2. 3). The Petitioners were represented at their appeal hearings by counsel (A.A. 75, 80, 83, 84, R.1. 75, 80, 83, 84, J.A. 3, R.2. 3).

The Company allowed the trial of the appeal cases de novo in order to give the employees a full opportunity to establish all the pertinent facts, and the employees all knew they were allowed to make a full record in this hearing

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[18] *Johns v. Baltimore & O. R.R. Co.*, D.C., N.D. Ill., E.D., 118 F. Supp. 317 (1954), aff. 347 U.S. 964, 74 S. Ct. 776 (1954); *Bohnen v. Baltimore & Ohio R.R. Co.*, D.C., N.D. Ind., 125 F. Supp. 463 (1954).

[19] Petitioner Counihan, on January 11, 1955 (A.A. 60, R.1. 60); Clem, on January 11, 1955 (A.A. 75, R.1. 75); DeVelbiss, on February 3, 1955 (A.A. 83, R.1. 83); Groves, on February 8, 1955 (A.A. 84, R.1. 84); Davis, on February 8, 1955 (A.A. 80, R.1. 80); Wiseman, on March 2, 1955 (A.A. 46, R.1. 46).

(A.A. 47, R.1. 47). The parties were advised by the hearing officer that the record would be left open for submission of affidavits (A.A. 105, 106, R.1. 105, 106, J.A. 58, R.2. 58), and, the parties were permitted to furnish proof on various matters and were permitted to fill the gap from time to time and to submit papers (J.A. 34, R.2. 34). The hearings were held on an informal basis. Petitioners' counsel was permitted to ask leading questions — a number of which called for conclusions of law and expressions of opinion (J.A. 61, R.2. 61), and, Petitioners were permitted to testify as to hearsay (A.A. 115, R.1. 115).

During the course of the appeal hearings, the General Chairman of the Committee testified that there was a great possibility that the national organization would favorably entertain an application if it is approved by the local lodges (A.A. 135, R.1. 135), but that was a prophecy (J.A. 78, R.2. 78). The Petitioners claim that he made certain statements relative to his personal feelings in this matter (A.A. 63, 64, R.1. 63, 64). However, he testified in the District Court that he did not make the statements attributed to him[20] (A.A. 131, R.1. 131). On the contrary, he said that the discussion was confined to the manner in which or the procedure the Brotherhood adopted for these men to regain membership in the Brotherhood (A.A. 132, R.1. 132, J.A. 69, R.2. 69). He further testified that the policy has ordinarily been, up to the time the charges are actually preferred or even up to the time the hearing has begun, to endeavor to get these men into the Brotherhood (J.A. 76, R.2. 76); that Brotherhood organizers were placed into this territory on several occasions at the expense of the Committee to acquaint these men with the provisions and bene-

[20] The District Court found as a fact that he did not make the remarks attributed to him (A.A. 38, R.1. 38).

fits of the Brotherhood and the union shop agreement (J.A. 77, R.2. 77).[21]

After the appeal hearings, the Petitioners claim that four petitions were prepared and circulated with respect to their reinstatement (A.A. 65, 93, R.1. 65, 93). However, no one knew what was done with the petitions (A.A. 93, R.1. 93), nor, had any knowledge of them been brought to the attention of the General Chairman of the Committee, to whom they were alleged to have been addressed (A.A. 95, R.1. 95, J.A. 65, R.2. 65). The correct procedure for readmission into a local lodge of the Brotherhood after persons had been out more than sixty days (which was the situation of all of the Petitioners) was for them to sign the usual Form 130 (J.A. 64, 70, R.2. 64, 70); the forms are then given to the Secretary of the local Lodge, an investigating committee is then appointed, and upon their favorable vote, the applications are submitted to the members of the local Lodge present at the regular meeting for a vote (J.A. 64, 78, R.2. 64, 78). Petitioners' counsel admitted in the District Court that Petitioners had never gone through the procedure of being reinstated (J.A. 25, R.2. 25), were never formally readmitted to membership in the Brotherhood (A.A. 73, R.1. 73), and were never notified by the Brotherhood or by the lodges that they were reinstated (J.A. 25, R.2. 25).

The Petitioners' appeal hearing cases have been officially decided and the employees held to be in non-compliance with the union shop agreement. However, because of an

[21] Apparently these efforts were successful, because even though there may have been thousands who joined U.R.O.C. (P. 6), these Respondents are informed that there were less than 100 named plaintiffs in suits throughout the country — the reasonable inference being that after the decisions in the other U.R.O.C. litigated cases, most of the employees either dropped out of U.R.O.C. while retaining membership in another union "national in scope", or, joined another union "national in scope".

injunction issued in the McNamar case,[22] which extended from January of 1955 to about March of 1956 (A.A. 37, R.1. 37, J.A. 41, R.2. 41), the Company did not notify the Petitioners until March 23, 1956 (A.A. 9, R.1. 9) that their employment would cease on April 2, 1956 (A.A. 9, 13, R.1. 9, 13). After the filing of the Complaint and during the course of the hearings in the Court below, the employment of all of the Petitioners remained status quo by virtue of an agreement between the parties (A.A. 33, R.1. 33). On April 16, 1956, the District Court, by an Order, granted an injunction pending appeal, restraining the Company from discharging the Petitioners and restraining the Brotherhood and the Committee from inducing the discharge of the Petitioners. On August 13, 1956, the Court of Appeals by Order granted a stay of the Mandate of the Appellate Court pending the application to this Court for Writ of Certiorari (R. 11). Pursuant thereto, the employment of all the Petitioners has remained status quo.

ARGUMENT

REASONS FOR DENIAL OF WRIT

I. There is no conflict in the decisions of the Circuit Courts of Appeal that exclusive primary jurisdiction of disputes involving the interpretation of union shop agreements, is within the administrative tribunals created by the Railway Labor Act.

The Petitioners abandoned their membership in the Brotherhood (the contracting organization), and joined U.R.O.C. They were then cited by the Brotherhood as being in non-compliance with the union shop agreement, for non-payment of dues. They thereupon requested and were afforded hearings by the Company's terminal trainmaster.

[22] Reported as *Bohnen v. Baltimore & O. R.R. Co., supra.*

After decisions adverse to them were rendered, they requested and were afforded appeal hearings. Decisions adverse to them were again rendered, and, they were thereafter notified by the Company of their imminent discharge. Prior to the scheduled date of their discharges, and without having exhausted the administrative remedies provided by the Railway Labor Act, the Petitioners sought Court intervention, by way of injunctive relief, to restrain their discharges.[23]

The facts, as related, are not distinguishable from those involved in the other U.R.O.C. litigated cases, infra, wherein the Second, Fourth, Sixth, Seventh and Ninth Circuit Courts of Appeal have uniformly held that the disputes before them were those growing out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, and, were, therefore, within the exclusive primary jurisdiction of the administrative tribunals created by the Railway Labor Act. *U.R.O.C. v. Wyer*, C.C.A. 2, 205 F. 2d 153 (1953), cert. denied 347 U. S. 929, 74 S. Ct. 529 (1954); *Alabaugh v. Baltimore & Ohio R. R. Co.*, C.C.A. 4, 222 F. 2d 861 (1955), cert. denied 350 U. S. 839, 76 S. Ct. 77 (1955); *Pigott v. Detroit, T. & I. R. R. Co.*, C.C.A. 6, 221 F. 2d 736 (1955), cert. denied 350 U. S. 833, 76 S. Ct. 68 (1955); *U.R.O.C. v. Pennsylvania R. Co.*, C.C.A. 7, 212 F. 2d 938 (1954), cert. denied 347 U. S. 929, 74 S. Ct. 531 (1954); *U.R.O.C. v. Northern Pac. Co.*, C.C.A. 9, 208 F. 2d 135 (1954), cert. denied 347 U. S. 929, 74 S. Ct. 529 (1954). All of the appellate decisions conform with the views expressed by this Court in *Order of Railway Conductors v.*

[23] After a lengthy hearing on Motions to Dismiss, the District Court dismissed the Complainant for lack of jurisdiction, since the Complaint, of necessity, would have required the Court to interpret and apply a union shop agreement. The action of the District Court was affirmed on appeal.

Pitney, 326 U. S. 561, 66 S. Ct. 322 (1946), wherein it was stated:

> "* * * Not only has Congress thus designated an agency peculiarly competent to handle the basic question here involved, but as we have indicated in several recent cases in which we had occasion to discuss the history and purpose of the Railway Labor Act, it also intended to leave a minimum responsibility to the Courts."

and, in *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, 70 S. Ct. 577 (1954), wherein it was stated:

> "* * * The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

Notwithstanding the language of this Court in the *Pitney* and *Slocum* cases, supra, as adopted by the appellate courts, the Petitioners contend that they have exhausted all of their administrative remedies. Their basis for this argument is that the agreement created a system board of adjustment, and, since they were prevented from appealing to it, the decision of the appeals hearing officer was final and binding upon them. This contention is without substance. The words "final and binding" were never construed nor intended by the parties to preclude a further appeal to the administrative tribunals created by the Act, but, only to further proceedings **on the property**. There was the same contractual provision in the *Alabaugh* case, supra, yet the disputes of Burton C. Johns, Herbert V. Thompson and Virgil G. Hughes were petitioned by the Company to the National Railroad Adjustment Board — the Board having docketed the cases and taking jurisdiction (First Division, Docket 33149).

The basis of the Petitioners' argument falls, because there was no system board of adjustment. The identical contractual provision and the same contention as to the creation of a system board of adjustment, was before the Court of Appeals for the Fourth Circuit in the *Alabaugh* case, supra. There, it was stated (p. 866):

> "None of the grounds upon which it is sought to distinguish these cases has any merit. It is argued on the authority of our decision in Atlantic Coast Line R. Co. v. Pope, 4 Cir., 119 F. 2d 39, that the Board has no jurisdiction because of the provisions for appeal and arbitration in the union shop agreement; but *it is perfectly clear that the provision for the procedure prescribed by the agreement is in no sense the creation of a System Board of Adjustment such as we dealt with in the Pope case;* and in none of the cases cited, in which the same union shop agreement was involved, does it seem to have been thought that the jurisdiction of the Board was in anywise affected by the provision. *Furthermore, the provision of the agreement referred to relates to disputes between the Brotherhood and the carrier and not to grievances of the employees against the carrier.*" (Emphasis ours.)

Since the exclusive primary jurisdiction of this type of dispute is within administrative tribunals, the dispute must be submitted to those tribunals created by Sec. 153 First of the Act. This Section creates not only the National Railroad Adjustment Board but, also provides for the establishment of a special three-man board (First (f)).[24]

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[24] Sec. 153 First (f) provides for the Secretary of Labor and a three-man special three-man board to determine a dispute as to whether a labor organization has the right to participate in the selection of the labor members of the National Railroad Adjustment Board, as only those labor organizations which are "national in scope" can participate in such selection, Sec. 153 First (a).

The National Railroad Adjustment Board can resolve the eight issues raised by the Complaint.[25] However, it can only resolve the issue of "national in scope" upon the basis of whether or not U.R.O.C. has utilized the machinery provided by Sec. 153 First (f) to have itself officially determined to be "national in scope" —as this issue is specifically entrusted to the Secretary of Labor and a special three man board established by Sec. 153 First (f).

II. No important Federal question, requiring settlement by this Court, is presented.

There is no dissimilarity in the facts of this case with those involved in the other U.R.O.C. litigated cases, supra. The decision of the appellate court is in conformity with the decisions of the Courts of Appeal for the Second, Fourth, Sixth, Seventh and Ninth Circuits, supra, which have uniformly resolved the forum for and the remedies of the relatively small number of railroad employees involved.[26] Their requirements are neither unfair nor unduly burdensome.

III. The legal aspects of Rychlik v. Pennsylvania R.R. Co. are entirely distinct from those of this case.

In *Rychlik v. Pennsylvania R.R. Co.*, D. C., W. D., N. Y., 128 F. Supp. 449 (1955), the plaintiff had voluntarily dropped his membership in the Brotherhood and joined

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[25] The issues were (1) partiality of the Railroad Adjustment Board; (2) affiliation with other unions national in scope; (3) creation of a system board of adjustment; (4) unreasonable delays in the hearings and illegal extensions of time; (5) de facto reinstatement; (6) U.R.O.C. being "national in scope"; (7) unfair hearings and denial of due process; (8) discrimination — all of which were passed upon by the District Court (A.A. 34-41, R.I. 34-41).

[26] Although Petitioners claim (P. 6) that there were thousands who joined U.R.O.C., these Respondents are informed that there were less than 100 named plaintiffs in all of the suits filed.

U.R.O.C. He was thereafter cited for non-compliance with the union shop agreement. He requested and was afforded a hearing before a System Board of Adjustment.[27] A decision adverse to Rychlik was rendered, and, he was then notified by the Railroad of the termination of his service. He thereafter sought reinstatement to his employment, by way of injunctive relief. Motions to dismiss the Complaint were granted, but the judgment was reversed on appeal, on the ground that the findings of the System Board of Adjustment were subject to judicial review because of the possibility of the Board not being impartial. *Rychlik v. Pennsylvania R.R. Co.*, C.C.A. 2, 229 F. 2d 171 (1956). Upon petition of the Railroad and the Brotherhood, certiorari was granted and the matter is now pending in this Court. 351 U.S. 930, 76 S. Ct. 789 (1956).

In the instant case, a system board of adjustment was not created. *Alabaugh v. Baltimore & O. R.R. Co.*, supra. No hearing was had before a system board of adjustment, such as in the *Rychlik* case, supra, or in *Edwards v. Capital Airlines*, C.C.A., D. C., 176 F. 2d 755 (1949), so that no question of reviewability of a system board's findings, is involved.

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[27] The System Board of Adjustment was created by the union shop agreement, pursuant to Sec. 153 Second of the Railway Labor Act. It was a Board to which any of the parties, including an aggrieved employee, could submit a dispute.

CONCLUSION

For the aforegoing reasons, these Respondents respectfully pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 363

WILLIAM R. SAMPSELL, ET AL.,
Petitioners,

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AND
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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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INDEX

	PAGE
Petition for Rehearing of Order Denying Petition for Writ of Certiorari	1
Reasons for Granting Rehearing and Issuing the Writ	2
Intervening Circumstances of Substantial Effect	2
Other Substantial Grounds Available to Petitioners Although Not Previosuly Presented	4
Reasons for Granting the Writ of Certiorari Pursuant to Section 1651	5
Jurisdiction of this Court	5
Argument	5
Conclusion	7
Certificate of Counsel	7
Motion for Leave to File Petition Under Section 1651, etc.	9

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners pray that this Court grant rehearing of its order of December 10, 1956, denying the petition for writ of certiorari, 352 U.S. ....., and that a writ of certiorari

issue to review the judgment of the Court of Appeals for the Fourth Circuit as prayed for in the petition filed August 30, 1956, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

Intervening Circumstances of Substantial Effect

On December 10, 1956, the date on which the order denying certiorari was announced, this Court heard argument in the strikingly similar case of *Pennsylvania R. Co. v. Rychlik*, No. 56 (on certiorari to the Court of Appeals for the Second Circuit), such argument continuing and being concluded on December 11, 1956. Said case is now *sub curia* awaiting decision. In the course of such argument, colloquy between the Court and counsel developed and enlarged on the following difficult questions common to both the *Rychlik* case and the present case which will almost necessarily be determined by this Court's impending decision:

1. Is a final administrative decision that petitioners were in default under a union shop agreement, rendered pursuant to a system board procedure, subject to judicial review (a) merely because the Brotherhood's representatives participate therein and are presumptively biased or (b) when actual bias is alleged and proved?

2. In determining whether "UROC" (the union to which petitioners in this case as well as respondent in the *Rychlik* case belonged) was "national in scope", is it conclusive against such claim that UROC had not placed a representative on the National Railroad Adjustment Board pursuant to Section 3, First (f) of the Railway Labor Act?

3. Does the Union Shop Amendment (Section 2, Eleventh of the Railway Labor Act), in conferring a statutory right

on petitioners to belong to a union which is national in scope and thus retain their employment, afford them no remedy to enforce the right except at the election of such union to proceed administratively under Section 3, First (f), and subject to the further requirement that the opposing unions must first certify a dispute to the Secretary of Labor?

4. Can the employees' bargaining agent, occupying a trust relationship to them, decline to reinstate them in membership after a default and still claim that membership is "available" to them under the requirements of Section 2, Eleventh (a) of the Railway Labor Act?

We shall not here enlarge on these points. It is both expedient and in the interest of substantial justice that the present case should remain subject to the jurisdiction of this Court until the above questions are concluded by the decision in the *Rychlik* case.

Upon such decision, the sole remaining question for determination in this case will be whether petitioners' complaint presents a true system board procedure analogous to that in the *Rychlik* case[1] and whether petitioners have exhausted their administrative remedies thereunder. Petitioners request only that they be given the opportunity to convince this Court that the union shop agreement in their case makes the decision heretofore rendered against them "final and binding" (Section 5) and that the hearing pro-

[1] It is respectfully urged that this Court would be in a better position to render a just decision as to the similarities and dissimilarities of the *Rychlik* case and the present case after the hearing of December 10-11. One of the justices then stated frankly in open court that he had been unable to familiarize himself with the briefs prior to the argument; and the detailed circumstances of the two cases can scarcely have been as clearly in the Court's mind when certiorari was denied as they would be today.

cedure setting up the board of adjustment (Section 8) "shall be the sole and exclusive method for determining disputes under this agreement".[2] It cannot be denied that petitioners have followed to the end the procedure set up in the agreement; and if it qualifies as a system board procedure, it effectively ousts the jurisdiction of the National Railroad Adjustment Board.

Attention of the Court is, further, called to the applicability of *Steele v. Louisville & N. R. Co.* (1944) 323 U.S. 192, in the enforcement of the fiduciary duties of the bargaining agent toward the individual employee. This point was more fully treated in the petition for certiorari in a similar case, *Alabaugh v. Baltimore & Ohio R. Co.*, cert. den. 350 U.S. 831.

Other Substantial Grounds Available to Petitioners Although Not Previously Presented.

The petition for certiorari in this case invoked the Court's jurisdiction under U.S. Code, Title 28, Section 1254(1), the usual provision for review by certiorari.

Further consideration has led to the conclusion that this case is a proper one for review by this Court by issuance of the so-called "common law" writ of certiorari under Section 1651 of Title 28, since the issue is essentially whether the District Court has improperly refused to entertain a cause of action appropriately within its jurisdiction.

Therefore, petitioners attach a motion for leave to have their petition for certiorari also considered by this Court under Section 1651.

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[2] The union shop agreement is set out in Appellants' Appendix in the Court below (filed with the Petition for Certiorari), at pp. 17-22.

(The following brief argument upon this question is based upon the assumption that the Court grants such motion.)

REASONS FOR GRANTING THE WRIT OF CERTIORARI PURSUANT TO SECTION 1651.

Jurisdiction of this Court

The jurisdiction of this Court is invoked under U.S. Code, Title 28, Section 1651.

Argument

As stated by this Court in *United States Alkali Assn. v. United States*, 325 U.S. 196, at p. 202:

> "The traditional use of such writs both at common law and in the federal courts has been, in appropriate cases, to confine inferior courts to the exercise of their prescribed jurisdiction or *to compel them to exercise their authority when it is their duty to do so.*" (Italics supplied; citing *In re Chetwood*, 165 U.S. 443, 462.)

In the present case substantial hardship will be imposed on petitioners if they are obliged to invoke the supposed jurisdiction of the National Railroad Adjustment Board (pursuant to the lower court's decision dismissing their bill), without any statutory provision for review thereof; and without any clear judicial statement as to the nature and scope of possible review. Moreover, they may be met by the contention that the administrative hearings already conducted are "final and binding", as provided by the union shop agreement in this case. Indeed, it cannot possibly be known until an effort is made to have the Board decide the questions, and thereafter to obtain judicial review, what the ultimate ruling of the federal courts on the issues involved would be, or whether such a ruling can ever be obtained.

It is thus clear that the abdication of jurisdiction by the District Court (assuming its decision is erroneous) can only be corrected after years of litigation and may never be corrected at all.

Meanwhile the thirty-two petitioners will suffer irreparable harm, in that they will be discharged from their employment immediately and will not only lose their jobs but the seniority rights which they have accumulated through years of service. And the supposed right to litigate through the Adjustment Board, and thereafter seek judicial review, will be purely illusory to men without employment and without funds to finance litigation.

The present case is precisely the type of case in which precedents sustain review by this Court under Section 1651, for it involves the question of exclusive primary jurisdiction of administrative bodies as affecting the exercise of jurisdiction by the district courts.

> *Far East Conference v. United States*, 342 U.S. 570 (exclusive primary jurisdiction of the Federal Maritime Board);
> *United States Alkali Assn. v. United States*, 325 U.S. 196 (exclusive primary jurisdiction of the Federal Trade Commission);
> *McClellan v. Carland*, 217 U.S. 268 (mandamus to compel federal court not to abdicate its jurisdiction to State Court).

Nor does the fact that the question might otherwise or ultimately be reviewed by this Court affect its right and power to proceed by common law certiorari. *United States Alkali Assn. v. United States, supra; Far East Conference v. United States, supra.* Thus, in the former case, notwithstanding the right of appeal, this Court said, "The questions now presented involve the propriety of the exercise, by the district court, of its equity jurisdiction, and an asserted

conflict between its jurisdiction and that of an agency of Congress . . ." Accordingly, the Court granted the writ and reviewed the case pursuant thereto.

As additional reasons for exercise of the writ in the present case, reference is made to the petition for certiorari herein filed pursuant to Section 1254(1).

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

HERBERT M. BRUNE, JR.,
Attorney for Petitioners.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58(2) of the rules of this Court.

HERBERT M. BRUNE, JR.,
Attorney for Petitioners.

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ON PETITION FOR A WRT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION FOR LEAVE TO FILE PETITION UNDER SECTION 1651 AND TO HAVE PETITION FOR CERTIORARI ALSO CONSIDERED UNDER SECTION 1651

Petitioners respectfully move for leave to file the annexed (hereinbefore printed) petition for rehearing of the order of this Court denying the petition for writ of cer-

tiorari in this case entered on December 10, 1956, for consideration also as a petition for the issuance of a common law writ of certiorari pursuant to Section 1651 of Title 28 of the United States Code; and to have the original petition for certiorari in this case, as well as said petition for rehearing, also considered by this Court in the exercise of its powers to issue such writs as codified in said Section 1651.

HERBERT M. BRUNE, JR.,

Attorney for Petitioners.